

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 148 OF 2004

SMT. PIEDADE FERNANDES AND 4 ORS., ...Appellants

Versus

MR.AGNELO D'SOUZA AND 3 ORS., ...Respondents

Mr. S. S. Kantak, advocate for the appellants.

Coram:- R. M. LODHA, J.

Date:- 24th August, 2005

P.C.

Heard Mr. Kantak, learned counsel for the appellants and perused the judgments of the courts below.

The Appeal Court as well as the trial Court found as a matter of fact that the plaintiffs have been able to establish that they were the owners in possession of the property described in paragraphs 1 and 2 of the plaint. Both the Courts also recorded the finding that the defendants/appellants herein have encroached into the suit property. In this regard, the Appeal Court referred to the averments made by the defendants in the written statement and observed that in the written statement there is evasive denial with regard to paragraphs 1, 2 and 3 of the plaint. The Appeal Court observed that the only defence raised in the written statement by the appellants-defendants was that the suit survey no.17/2 belonged to one Tome Bruno Ferrao. However, no evidence was led by the defendants with regard to the ownership of the said Tome Bruno Ferrao. As a matter of fact, the said person has not been examined by the defendants in the evidence. The learned counsel for the appellants submitted that regarding the subject property a separate suit is pending between the present respondents and the said Tome Bruno Ferrao. In my view, the said suit will be decided on its own merits. The plaint in the said suit has not been produced by the appellants-defendants before the trial Court. No

application was made before the Appeal Court for production of additional evidence for placing on record the copy of the plaint. In this view of the matter this aspect does not deserve to be given much weight. The Appeal Court has at length considered the oral and documentary evidence and then reached the finding that the plaintiffs have been able to establish that they were owners in possession of the subject property and that the defendants have encroached into the suit property. The findings recorded by the courts below are based on proper appreciation of the evidence on record.

No substantial question of law arises.

The Second Appeal is dismissed in limine

R. M. LODHA, J.